

**REMARKS**

Claims 1, 2, 5-12, 15-22, 25-27 and 30 are pending in the application.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 have been rejected.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 remain pending in this application.

Reconsideration of the claims is respectfully requested.

**I. CLAIM REJECTION UNDER 35 U.S.C. § 103**

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,901 to *Imamatsu*, hereinafter “Imamatsu” in view of U.S. Patent No. 6,928,579 to Äijä, *et al.*, hereinafter “Äijä.” The Applicants respectfully traverse the rejection.

In ex parte examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a prima facie case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant

of a patent. In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

The Applicants direct the Examiner's attention to independent Claim 1, which recites unique and novel elements including those emphasized below:

1. A wireless communication device capable of downloading a software update file from a wireless network, said wireless communication device comprising:

a non-volatile memory capable of being re-programmed by sectors, wherein said non-volatile memory stores: 1) a target file to be updated, 2) said downloaded software update file, and 3) *a journal comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory;*

a random access memory; and

a main processor capable of replacing target code in said target file with replacement code from said downloaded software update file, wherein said main processor creates a first block of replacement code in said random access memory and re-programs a

first target sector of said non-volatile memory by storing said first block of replacement code into said first target sector, and wherein said main processor updates first status information in a first entry in said journal associated with said first target sector, and wherein said main processor is further capable of storing first target code from said first target sector in a save-area of said non-volatile memory prior to storing said first block of replacement code into said first target sector and said first status information comprises a second parameter indicating that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory.

The Examiner asserted that Imamatsu as modified by Äijä teaches the limitation of “*a journal comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory*”. In support of this assertion, the Examiner states that Imamatsu teaches “a journal stored in non-volatile memory that includes status information (see, for example, version management domain 42 in FIG. 5)”. Applicants respectfully disagree. For the purpose of clarity, the part of the description of FIG. 5 from Imamatsu is reproduced below:

A sector-buffer-write completion flag indicates whether the update-used software for partial updating has been written into the sector buffer 44a. [Imamatsu, Col 8, ll. 27-29]

Imamatsu relates to a single piece of information (“an indication”) stored in memory. This is a “flag” indicating a high/low state. Imamatsu does not teach or suggest maintaining a journal of the progress of updates. In contrast, Claim 1 comprises the element of “*journal comprising a plurality of entries*”.

Moreover, the indicator of Imamatsu is only a flag showing if an installation is in progress or is not in progress. In contrast to the “indication” of Imamatsu, as illustrated by Claim 1, there may

be a plurality of information elements related to the status information stored in the journal of Claim

1. Claim 1 of the pending disclosure states, in part:

“said main processor creates a first block of replacement code in said random access memory and re-programs a first target sector of said non-volatile memory by storing said first block of replacement code into said first target sector, and *wherein said main processor updates first status information in a first entry in said journal associated with said first target sector*, and wherein said main processor is further capable of storing first target code from said first target sector in a save-area of said non-volatile memory prior to storing said first block of replacement code into said first target sector and said *first status information comprises a second parameter indicating that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory*” [Claim 1, pending disclosure].

Therefore the journal of the present disclosure comprises both first status information and a second parameter that indicates a successful update. In contrast, Imamatsu only teaches “an indication” of installation status, and does not teach or suggest a plurality of entries related to “status information associated with a re-programmed sector of said non-volatile memory” as claimed in Claim 1.

The office action asserts that Äijä cures this deficiency, but fails to show “*a journal comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory*”. The office action points to “an indication” that the operation is complete, but fails to show where the prior art of record teaches or suggests a plurality of entries, where each of the plurality of entries may comprise a plurality of information elements. Moreover, even if the examiner’s interpretation of Äijä is correct, there is no

teaching or suggestion in Äijä to show that a check is preformed to see if the update was **successfully** preformed, as taught in Claim 1.

Furthermore, the Examiner has not described in Imamatsu, Äijä, or the combination of Imamatsu and Äijä that a person of skill in the art would solve by adding the storage of such a plurality of entries to the combination of Imamatsu and Äijä. Instead, the Applicants submit that the motivation to store such a plurality of entries comes from the Applicants' own specification.

As such, amended independent Claim 1 is patentable over the cited references. Amended independent Claims 11, 21 and 26 recited limitations analogous to the novel and non-obvious claims emphasized in traversing the rejection of Claim 1 and, therefore, also are patentable over the cited references. Claims 2 and 5-10 depend from Claim 1, Claims 12 and 15-20 depend from Claim 11, Claims 22 and 25 depend from Claim 21, and Claims 27 and 30 depend from Claim 26, and include all the limitations of their respective base claims. Therefore, Claims 2, 5-10, 12, 15-20, 22, 25, 27 and 30 also are patentable over the cited references.

Accordingly, the Applicants respectfully request the Examiner to withdraw the § 103 rejection with respect to these claims.

**CONCLUSION**

As a result of the foregoing, the Applicants assert that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *[jmockler@munckcarter.com](mailto:jmockler@munckcarter.com)*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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